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13  
14 **IN THE UNITED STATES DISTRICT COURT**  
15  
16 **FOR THE DISTRICT OF ARIZONA**

17 Cash Flow Management, LLC, a Delaware  
18 limited liability company, d/b/a Kinective,

19 Plaintiff,

20 v.

21 Kinecta Federal Credit Union, a federal  
22 credit union,

23 Defendant.

Case No. \_\_\_\_\_

**Complaint for Declaratory Judgment**

24 Plaintiff, Cash Flow Management, LLC, DBA Kinective (“Kinective” or  
25 “Plaintiff”), brings this Complaint for Declaratory Judgement arising under the Lanham  
26 Act, 15 U.S.C. § 1051 *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and  
27 2202 against Defendant Kinecta Federal Credit Union (“Kinecta” or “Defendant”), seeking  
28 a declaratory judgment that:

29 A. Plaintiff’s use of the KINECTIVE name to identify Plaintiff’s  
30 KINECTIVE-branded software and services for financial institution automation,  
31 workflow and document management, and transaction processing, is not likely to cause  
32 confusion among purchasers and prospective purchasers of Plaintiff’s software and related  
33 services over whether those goods and services share an origination, association or

1 affiliation with Defendant's KINECTA-branded credit union services, and the parties may  
2 continue to co-exist in the market with each other's use of their respective trademarks;

3 B. Defendant's KINECTA Marks are not "famous" as defined in  
4 15 U.S.C. § 1125(c)(2)(A); and

5 C. Plaintiff's use of Plaintiff's KINECTIVE Mark is not likely to cause  
6 dilution of Defendant's KINECTA Marks; and/or

7 D. The equitable doctrine of laches bars Defendant's claim that  
8 Plaintiff's use of Plaintiff's KINECTIVE Mark is reasonably likely to cause confusion  
9 over whether Plaintiff's software and services share an origination, association or  
10 affiliation with Defendant or its KINECTA-branded credit union services.

11 For its Complaint against the Defendant, Plaintiff alleges as follows:

12 **PARTIES**

13 1. Plaintiff Cash Flow Management, LLC is a Delaware limited liability  
14 company with its principal place of business in Gilbert, Arizona.

15 2. Defendant Kinecta Federal Credit Union is, on information and belief, a  
16 federal credit union with its principal place of business in Manhattan Beach, California.

17 **JURISDICTION AND VENUE**

18 3. This is an action arising under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and  
19 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

20 4. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 1114  
21 and 1121 and 28 U.S.C. §§ 1331 and 1338(a) in that it involves a federal action arising  
22 under the Lanham Act, complete diversity of citizenship exists, and the amount in  
23 controversy exceeds \$75,000.

24 5. Plaintiff is a citizen of Arizona.

25 6. Defendant offers credit union services, including checking and savings  
26 account services, credit card services, loan and credit line services, insurance services, and  
27 wealth management services.  
28



1 commerce to identify an expanding array of Plaintiff's KINECTIVE Suite of Software  
2 and Services to its financial institution customers.

3 14. Plaintiff's use of the KINECTIVE Mark has been widespread and  
4 prominent. In 2023, certain of Plaintiff's KINECTIVE Suite of Software and Services,  
5 identified by the KINECTIVE Mark, were utilized by over 2,500 financial institutions  
6 across the U.S. Currently, more than 3,400 financial institutions, banks and credit unions  
7 nationwide are utilizing certain of Plaintiff's KINECTIVE Suite of Software and Services  
8 identified by the KINECTIVE Mark.

9 15. Plaintiff is a business-to business organization that directs its marketing and  
10 advertising efforts for its KINECTIVE Mark and KINECTIVE Suite of Software and  
11 Services solely toward its customers, which are banks, credit unions, fintech  
12 organizations, and related financial institutions.

13 16. Plaintiff owns and has operated since at least June 6, 2023 a website using  
14 the <Kinective.io> domain name (the "KINECTIVE Website").

15 17. Plaintiff uses KINECTIVE Mark on the KINECTIVE Website to advertise,  
16 market, and promote to financial institutions its KINECTIVE Suite of Software and  
17 Services.

18 18. Plaintiff uses the KINECTIVE Mark to promote the KINECTIVE Suite of  
19 Software and Services prominently on social media, including on (i) the  
20 @KinectiveBanking Facebook account, (ii) the @Kinective YouTube account, and (iii)  
21 the Kinective LinkedIn account.

22 19. Plaintiff further use the KINECTIVE Mark to promote regularly the  
23 KINECTIVE Suite of Software and Services at financial industry conferences and  
24 tradeshow. Indeed, since at least as early as June 2023, Plaintiff has attended dozens of  
25 such events to promote its KINECTIVE Suite of Software and Services identified by  
26 Plaintiff's KINECTIVE Mark.

27 20. Plaintiff has not offered, does not offer, and does not intend to offer credit  
28 union services or related services such as checking/savings account services, credit card

1 services, loan or line of credit services, insurance services, or wealth management  
2 services.

3 21. Plaintiff has not, does not, and does not intend to market or advertise its  
4 KINECTIVE Suite of Software and Services, whether under the KINECTIVE Mark or  
5 otherwise, directly to the general public that would or could include customers or members  
6 of credit unions or banks.

7 22. Where a financial institution has incorporated or utilized Plaintiff's  
8 KINECTIVE Suite of Software and Services, Plaintiff's KINECTIVE mark is not visible  
9 to the financial institution's own customers or members in any manner or at any time when  
10 such customers/members interact or transact with their financial institution.

11 23. The purchase and implementation of Plaintiff's KINECTIVE Suite of  
12 Software and Services within a financial institution requires a long lead-time. Indeed,  
13 sales cycles for Plaintiff's KINECTIVE Suite of Software and Services often last several  
14 months and include multiple interactions between Plaintiff and its potential financial  
15 institution customer. During this time, Plaintiff's financial institution customers, on  
16 information and belief, undertake a careful and deliberate review of Plaintiff and its  
17 KINECTIVE Suite of Software and Services before awarding any contract. Further,  
18 actual implementation of Plaintiff's KINECTIVE Suite of Software and Services within a  
19 financial institution typically requires several months of significant involvement with, and  
20 interaction between, the IT departments of both Plaintiff and its financial institution  
21 customers.

22 24. On information and belief, those financial institution professionals  
23 responsible for selecting, purchasing and implementing Plaintiff's KINECTIVE Suite of  
24 Software and Services are knowledgeable, sophisticated and exercise a high degree of care  
25 and diligence in making their decisions to purchase and implement Plaintiff's  
26 KINECTIVE Suite of Software and Services.

27

28

25. Plaintiff is the owner of U.S. Patent and Trademark Office (“PTO”) Application Serial No. 98053063 for the KINECTIVE Mark shown on the accompanying Exhibit A (the “‘063 Application”), which Plaintiff filed with the PTO on June 21, 2023.

26. On information and belief, the relevant consuming public associates the KINECTIVE Mark as identifying the KINECTIVE Suite of Software and Services originating from a single source, namely Plaintiff.

**Defendant’s Services and its KINECTA Marks**

27. Defendant claims to be the owner of:

a. PTO Registration No. 2592584 (the “‘584 Registration”) for KINECTA as a trademark for “Consumer and small business financial services, namely credit union loan services, credit union deposit services, credit union insurance brokerage services in the field of property and casualty, homeowners, renters, auto, life and long term care, and credit union investment consultation, credit union financial planning” (the “KINECTA Mark”), issued by the PTO on July 9, 2002.

b. PTO Registration No. 3273485 (the “‘485 Registration”) for:



as a trademark for “Credit Union services; financial services, namely banking, individual retirement accounts, consumer and mortgage lending, securities brokerage, financial planning, and life, property and casualty insurance agency and brokerage services” (the “KINECTA Design Mark”), issued by the PTO on August 7, 2007.

1           The foregoing KINECTA Mark and KINECTA Design Mark herein  
2 collectively referred to as the “KINECTA Marks”. Copies of the registration  
3 certificates for the KINECTA Marks are attached within Exhibit B.  
4

5           28. On information and belief, Defendant currently offers, and has only ever  
6 offered, credit union services to member customers, including checking/savings account  
7 services, credit card services, loan and credit line services, insurance services, and wealth  
8 management services (the “KINECTA Credit Union Services”).

9           29. On information and belief, Defendant now uses, and has only ever used, the  
10 KINECTA Marks to identify the KINECTA Credit Union Services.

11                           **Defendant’s Interactions with Plaintiff**

12           30. Defendant currently is, and has been a customer of Plaintiff for at least years.

13           31. In or about June 2023, Plaintiff announced its adoption of the KINECTIVE  
14 Mark for the KINECTIVE Suite of Software and Services via email to its then existing  
15 customers, including Defendant.

16           32. Defendant uses, and has used, certain of the KINECTIVE Suite of Software  
17 and Services identified by the KINECTIVE Mark.

18           33. By virtue of the business relationship between the parties, Defendant and  
19 Plaintiff are, and have been, engaged in an ongoing commercial relationship involving at  
20 least multiple emails over the span of more than a year wherein Plaintiff used the  
21 KINECTIVE Mark to identify certain of the KINECTIVE Suite of Software and Services.

22           34. In or about July 2024, Plaintiff invoiced Defendant for certain of the  
23 KINECTIVE Suite of Software and Services. These invoices prominently featured the  
24 KINECTIVE Mark.

25           35. In our about July 2024, at least one Defendant’s employees registered with  
26 Plaintiff’s customer support portal for the KINECTIVE Suite of Software and Services.  
27 Plaintiff’s customer support portal prominently features the KINECTIVE Mark.  
28

1           36. In or about October 2024, Plaintiff invited several of Defendant's employees  
2 – including its then CEO, Senior Vice President, and Information Technology analysts, to  
3 a KINECTIVE-branded cocktail/reception party that Plaintiff held at an industry  
4 conference in October 2024.

5           37. Prior to February 21, 2025, neither Defendant nor anyone associated with  
6 Defendant expressed to Plaintiff, or anyone connected to Plaintiff, any concern with  
7 Plaintiff's use of its KINECTIVE Mark to identify the Suite of Software and Services.

8           38. On or about February 24, 2025, Plaintiff received a letter from Defendant's  
9 counsel dated February 21, 2025, wherein Defendant demanded that Plaintiff immediately  
10 cease use of its KINECTIVE Mark and withdraw the pending '063 Application.

11           39. Defendant sent this demand letter to Plaintiff mere days prior to the March  
12 2, 2025 start of the *Governmental Affairs Conference 2025*, an annual financial institution  
13 industry conference held in Washington D.C. for credit union professionals to meet and  
14 engage with lawmakers. As it has dozens of times previously with other conferences,  
15 Plaintiff planned to attend this industry conference to promote its KINECTIVE-branded  
16 Suite of Software and Services.

17           40. Defendant's February 21, 2025 letter, however, demanded that Plaintiff  
18 agree, no later than February 28, 2025, that Plaintiff would refrain from all use of the  
19 KINECTIVE Mark at the Conference, and refrain also from any further use of the  
20 KINECTIVE name for Plaintiff's suite of software and services and to withdraw '063  
21 Application.

22           41. Defendant knows, or should know, that Plaintiff cannot comply with such  
23 demand in any event as Conference organizers have already produced printed material and  
24 other content in which Plaintiff's KINECTIVE mark would be featured, and the retraction  
25 of which Plaintiff cannot control at such late notice.

26           42. Defendant's demands to Plaintiff are based on Defendant's claims that its  
27 use of its KINECTA Marks for the KINECTA Credit Union Services and Plaintiff's use  
28



1 of the KINECTIVE Mark to identify the KINECTIVE Suite of Software and Services will  
2 “create a strong likelihood of confusion in the marketplace.”

3 43. Defendant further alleges that Plaintiff’s KINECTIVE Mark “is diluting the  
4 distinctive quality” of the KINECTA Marks.

5 44. Defendant also avers that Plaintiff’s continued use of the KINECTIVE Mark  
6 “is likely to lead members of the public to mistakenly believe that [Kinective’s] . . .  
7 business operations and the services it offers may be legitimately connected with, or  
8 sponsored or approved by [Kinecta].”

9 45. Plaintiff disputes Defendant’s assertions for numerous reasons.

10 46. First, contrary to Defendant’s assertion, Plaintiff’s use of its KINECTIVE  
11 Mark is not likely to cause confusion with Defendant’s KINECTA Marks.

12 47. Second, contrary to Defendant’s assertion, Plaintiff’s KINECTIVE Mark is  
13 not likely to dilute the distinctiveness of Defendant’s KINECTA Marks.

14 48. Furthermore, given the prior and ongoing business relationship between the  
15 parties and the length of time during which Defendant has delayed taking any action to  
16 question, or even challenge, Plaintiff’s widespread use of its KINECTIVE Mark with the  
17 KINECTIVE Suite of Software and Services, and the prejudice Plaintiff would unfairly  
18 suffer if Defendant’s trademark infringement and/or dilution claims were allowed to  
19 enjoin Plaintiff’s use, Defendant’s claims are barred by the equitable doctrine of laches.

20 49. The demands and threats in Defendant’s letter has caused in Plaintiff an  
21 apprehension of imminent suit. Plaintiff, therefore, brings this action to protect its rights  
22 and its business by seeking declaratory relief that will promptly and finally resolve the  
23 existing dispute between the parties concerning their respective rights with respect to the  
24 different marks used by each of the parties as trademarks to identify their respective goods.

25 **FIRST CLAIM FOR RELIEF**  
26 **(DECLARATORY JUDGMENT FOR NO LIKELIHOOD OF CONFUSION)**

27 50. Plaintiff re-alleges and incorporates by reference all allegations contained  
28 in the Complaint as though fully set forth herein.



1 Software and Services over whether Plaintiff's suite of software and services share an  
2 origination, association or affiliation with Defendant's KINECTA-branded credit union  
3 services.

4 **The Commercial Activities Are Not Competitive**

5  
6 59. The KINECTIVE Suite of Software and Services and the KINECTA Credit  
7 Union Services are fundamentally different, targeted to different classes of consumers,  
8 and the parties' respective goods and services are not in any way competitive.

9 60. Defendant is a business-to-consumer organization that, on information and  
10 belief, directs its KINECTA Credit Union Services toward those members of the general  
11 public seeking credit union services, such as checking/savings accounts, credit cards,  
12 loans and lines of credit, insurance, and/or wealth management services.

13 61. Plaintiff is a business-to-business entity that directs its KINECTIVE Suite  
14 of Software and Services solely toward financial institutions seeking to streamline and  
15 automate their backend services, workflow, document management, electronic  
16 transactions, and other related electronic aspects of their business management.

17 62. There is no meaningful overlap in the marketplace between Plaintiff's sales  
18 of Plaintiff's KINECTIVE Suite of Software and Services and Defendant's sales of  
19 Defendant's KINECTA Credit Union Services.

20 63. The difference between the commercial activities strongly weighs against  
21 any reasonable likelihood of confusion among purchasers, and potential purchasers, of the  
22 KINECTIVE Suite of Software and Services over whether Plaintiff's suite of software  
23 and services share an origination, association or affiliation with Defendant's KINECTA-  
24 branded credit union services. .

25 **Marketing Channels Are Not Similar**

26  
27 64. On information and belief, Defendant is a business-to-consumer  
28 organization that markets and promotes its KINECTA Credit Union Services directly to

1 those members of the general public seeking to avail themselves of credit union services,  
2 such as such as checking/savings accounts, credit cards, loans and lines of credit,  
3 insurance, and/or wealth management services.

4 65. Plaintiff, on the other hand, is a business-to-business entity that markets and  
5 promotes its KINECTIVE Suite of Software and Services, to financial institutions, where  
6 the decision makers for purchasing Plaintiff's KINECTIVE Suite of Software and  
7 Services are the officers and Information Technology professionals of those businesses.

8 66. The target consumers for the KINECTIVE Suite of Software and Services  
9 and the KINECTA Credit Union Services are fundamentally different and do not overlap  
10 in any meaningful way.

11 67. The different retail and marketing channels used by the parties weighs  
12 strongly against any reasonable likelihood of confusion among purchasers, and potential  
13 purchasers, of the KINECTIVE Suite of Software and Services over whether Plaintiff's  
14 suite of software and services share an origination, association or affiliation with  
15 Defendant's KINECTA-branded credit union services.

16 **Relevant Purchasers Exercise More Than Ordinary Care**  
17

18 68. The relevant purchasers of Plaintiff's KINECTIVE Suite of Software and  
19 Services are the officers and Information Technology professionals of financial  
20 institutions.

21 69. The costs to purchase and implement Plaintiff's KINECTIVE Suite of  
22 Software and Services are significant and technical requirements require a long-lead time  
23 for implementation and integration of the KINECTIVE Suite of Software and Services  
24 into any financial institution that purchases the software and/or related services.

25 70. On information and belief, those financial institution professionals  
26 responsible for selecting, purchasing and implementing Plaintiff's KINECTIVE Suite of  
27 Software and Services are knowledgeable, sophisticated and exercise a high degree of care  
28

1 and diligence in making their decisions to purchase Plaintiff's KINECTIVE Suite of  
2 Software and Services.

3 71. On information and belief, those financial institution professionals who are  
4 responsible for selecting, purchasing and implementing Plaintiff's KINECTIVE Suite of  
5 Software and Services are likely to know, when making those decisions, that Plaintiff's  
6 KINECTIVE Suite of Software and Services are not sold or offered for sale, nor have they  
7 ever been sold or offered for sale, by Defendant or the same source as the credit-union  
8 services sold under the KINECTA Marks.

9 72. The sophistication of, and high degree of care exercised by, the relevant  
10 purchasers of Plaintiff's KINECTIVE Suite of Software and Services weighs strongly  
11 against any reasonable likelihood of confusion among purchasers, and potential  
12 purchasers, of the KINECTIVE Suite of Software and Services over whether Plaintiff's  
13 suite of software and services share an origination, association or affiliation with  
14 Defendant's KINECTA-branded credit union services.

15 **There Are No Instances of Actual Confusion**

16  
17 73. The KINECTIVE Mark and KINECTA Marks have co-existed in the  
18 marketplace since at least June 2023.

19 74. Despite being used contemporaneously for more than one and a half years,  
20 Plaintiff is not aware of a single instance of confusion by anyone over whether Plaintiff's  
21 KINECTIVE Mark and KINECTIVE Suite of Software and Services are related in any  
22 way to the KINECTA Marks and KINECTA Credit Union Services.

23 75. The absence of even a single instance of actual confusion, despite the length  
24 of time during which the parties' respective products/services and marks have co-existed  
25 in the marketplace and in the parties' business relationship, weighs against a reasonable  
26 likelihood of confusion among purchasers, and potential purchasers, of the KINECTIVE  
27 Suite of Software and Services over whether Plaintiff's suite of software and services  
28

1 share an origination, association or affiliation with Defendant's KINECTA-branded credit  
2 union services.

3 **No Intent to Copy**

4  
5 76. Given the differences in the parties' marks and commercial activities, it is  
6 obvious that Plaintiff did not adopt its KINECTIVE Mark with an intent to copy, or  
7 otherwise benefit from, the KINECTA Marks.

8 77. The absence of any intent to copy weighs against a reasonable likelihood of  
9 confusion among purchasers and prospective purchasers of Plaintiff's suite of software  
10 and services over whether those software and services share an origination, association or  
11 affiliation with Defendant's KINECTA-branded credit union services.

12 **No Likelihood of Expansion**

13  
14 78. On information and belief, Defendant has no *bona fide* intent to expand its  
15 use of its KINECTA Marks to identify any software or related services for financial  
16 institutions.

17 79. Plaintiff has no intent to expand its use of the KINECTIVE Mark to identify  
18 credit union services.

19 80. There is no strong possibility that Plaintiff or Defendant will expand their  
20 commercial offerings to compete directly with the products and/or services of the other  
21 party.

22 81. The absence of any strong possibility of such expansion weighs against any  
23 reasonable likelihood of confusion.

24 82. Considering all of the factors, Plaintiff is entitled to a declaration that  
25 Plaintiff's use of its KINECTIVE Mark and Defendant's use of its KINECTA Marks is  
26 not likely to give rise to any reasonable likelihood of confusion among purchasers, and  
27 potential purchasers, of the KINECTIVE Suite of Software and Services over whether  
28

1 Plaintiff's software and services share an origination, association or affiliation with  
2 Defendant's KINECTA-branded credit union services.

3 **SECOND CLAIM FOR RELIEF**  
4 **(DECLARATORY JUDGMENT THAT THE KINECTA MARKS ARE NOT**  
5 **FAMOUS)**

6 83. Plaintiff re-alleges and incorporates by reference all allegations contained  
7 in the Complaint as though fully set forth herein.

8 84. As of August 2024, Defendant's KINECTA credit union was not among the  
9 top 10 credit union brands in the US according to *US News and World Report*. See  
10 attached Exhibit D. Similarly, as of April 2023, Defendant's KINECTA credit union was  
11 not among the top 10 credit union brands in the US according to *FinTech Magazine*. See  
12 *id.*

13 85. On information and belief, regardless of the extent of Defendant Kinecta's  
14 advertising, publicity or utilization of its KINECTA Credit Union Services, which is  
15 presently unknown to Plaintiff, the KINECTA Marks are not widely recognizable to the  
16 general consuming public of the United States as a designation of the sole source of credit  
17 union services.

18 86. On information and belief, regardless of the extent of Defendant Kinecta's  
19 advertising, publicity or utilization of its KINECTA Credit Union Services, which is  
20 presently unknown to Plaintiff, the consuming public, when encountering the KINECTA  
21 Marks, does not associate the marks, initially or otherwise, with credit union services.

22 87. On information and belief, regardless of the extent of Defendant Kinecta's  
23 advertising, publicity or utilization of its KINECTA Credit Union Services, which is  
24 presently unknown to Plaintiff, the name KINECTA is not a household name or part of  
25 the national consciousness.

26 88. Plaintiff is entitled to a declaration that Defendant's KINECTA Marks are  
27 not "famous" as defined in 15 U.S.C. § 1125(c)(2)(A).  
28

**THIRD CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT THAT THERE IS NO DILUTION)**

89. Plaintiff re-alleges and incorporates by reference all allegations contained in the Complaint as though fully set forth herein.

90. Plaintiff's KINECTIVE Mark is not sufficiently similar to Defendant's KINECTA Marks to cause dilution by blurring of Defendant's KINECTA Marks.

91. Defendant's KINECTA Marks were not widely recognized by the general consuming public when Plaintiff first used in U.S. commerce its KINECTIVE Mark to identify the KINECTIVE Suite of Software and Services.

92. Defendant's KINECTA Marks were not widely recognized by the general consuming public when Plaintiff filed with the PTO the '063 Application for the KINECTIVE Mark.

93. Consumers, including purchasers and potential purchasers of Defendant's credit-union services, are not likely to associate Plaintiff's KINECTIVE-branded software and services with Defendant or its KINECTA-branded credit union services.

94. For these reasons, Plaintiff is entitled to a declaration that Plaintiff's use of its KINECTIVE Mark is not likely to cause dilution by blurring of Defendant's KINECTA Marks.

**FOURTH CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT THAT CLAIM BARRED BY LACHES)**

95. Plaintiff re-alleges and incorporates by reference all allegations contained in the Complaint as though fully set forth herein.

96. Defendant should be barred, by the equitable doctrine of laches, from any relief based on those claims due to Defendant's lack of diligence in asserting its claims against Plaintiff and the prejudice that Plaintiff would otherwise unfairly suffer if Defendant's claims are used to restrain Plaintiff's continued use of the KINECTIVE Mark for Plaintiff's KINECTIVE Suite of Software and Services.



1           97. Plaintiff's KINECTIVE Mark and KINECTIVE Suite of Software and  
2 Services and Defendant's KINECTA Marks and KINECTA Credit Union Services have  
3 co-existed in the market since at least June 2023.

4           98. Plaintiff filed its application for PTO registration of the KINECTIVE Mark  
5 on June 21, 2023.

6           99. Defendant currently is, and has been for several years, a customer of  
7 Plaintiff for at least years.

8           100. In or about June 2023, Plaintiff announced its adoption of the KINECTIVE  
9 Mark for the KINECTIVE Suite of Software and Services via email to its then existing  
10 customers, including Defendant.

11           101. Defendant uses, and has used, certain of the KINECTIVE Suite of Software  
12 and Services identified by the KINECTIVE Mark.

13           102. On information and belief, and by virtue of the business relationship  
14 between the parties, Defendant knew, or in the exercise of reasonable diligence should  
15 have known, of Plaintiff's use of the KINECTIVE Mark for at least certain of the  
16 KINECTIVE Suite of Software and Services since at least as early as early as November  
17 2023.

18           103. If Defendant had notified Plaintiff promptly of Defendant's claims of  
19 infringement and/or dilution, Plaintiff would not have spent the considerable and  
20 continuing sums of money involved in building the KINECTIVE brand and developing  
21 and expanding Plaintiff's line of KINECTIVE Suite of Software and Services without first  
22 resolving Defendant's infringement and dilution claims.

23           104. Plaintiff announced its adoption of the KINECTIVE mark for its products  
24 and services in June 2023 through an email announcement to Plaintiff's customers,  
25 including Defendant.

26           105. Plaintiff also began using the <Kinective.io> domain name that same month  
27 and began using that domain name to advertise Plaintiff's products and services as the  
28 KINECTIVE products and services.

1           106. Plaintiff then formally switched its email addresses to @kinective.io in  
2 November 2023.

3           107. Plaintiff also began in November 2023 prominently featuring the  
4 KINECTIVE mark in all email communications between Plaintiff and its customers,  
5 including Defendant.

6           108. In or about July 2024, Plaintiff rebranded on Plaintiff's <Kinective.io>  
7 website and other marketing materials various existing products to variations on the  
8 KINECTIVE brand name, including specifically the KINECTIVE INSIGHT™,  
9 KINECTIVE ACCESS™, and KINECTIVE LINK & HUB™ brand names.

10           109. In or about July 2024, Plaintiff invoiced Defendant for certain of the  
11 KINECTIVE Suite of Software and Services. These invoices prominently featured the  
12 KINECTIVE Mark.

13           110. In or about July 2024, at least one Defendant's employees registered with  
14 Plaintiff's customer support portal for the KINECTIVE Suite of Software and Services.  
15 Plaintiff's customer support portal prominently features the KINECTIVE Mark.

16           111. In or about October 2024, Plaintiff invited several of Defendant's employees  
17 – including its then CEO, Senior Vice President, and Information Technology analysts, to  
18 a KINECTIVE-branded cocktail/reception party that Plaintiff held at an industry  
19 conference in October 2024.

20           112. If, at any time during the time that Plaintiff announced and introduced and  
21 developed awareness of the KINECTIVE brand name, Defendant had objected to  
22 Plaintiff's use of the KINECTIVE name for any of Plaintiff's products or services,  
23 Plaintiff would have had little incentive to invest in the KINECTIVE brand name and its  
24 awareness among its customers and potential customers without first resolving  
25 Defendant's infringement and dilution claims.

26           113. In the absence of any objection by Defendant to Plaintiff's use of the  
27 KINECTIVE name for any of Plaintiff's products or services, Plaintiff invested heavily in  
28 building the KINECTIVE name as the identity of Plaintiff's business name and the brand

1 name of Plaintiff's suite of products and services to become a leading brand in Plaintiff's  
2 industry.

3 114. Defendant's delay in notifying Plaintiff was unreasonable for several  
4 reasons.

5 115. First, Defendant's KINECTA Marks are not strong marks that have a  
6 reputation beyond Defendant's specific credit union services.

7 116. In addition, Defendant was not diligent in notifying Plaintiff of Defendant's  
8 intent to assert its purported trademark rights against Plaintiff's use of the KINECTA  
9 name.

10 117. Further, there is no evident harm to consumers, or the purchasers and  
11 prospective purchasers of Plaintiff's products, if Defendant's trademark claims are denied.

12 118. Moreover, Defendant was fully aware and not in good faith ignorance of  
13 Plaintiff's adoption, introduction and development of customer awareness of the  
14 KINECTIVE brand name for Plaintiff's products and services.

15 119. Defendant and Plaintiff are not competitors and do not offer competing  
16 products or services.

17 120. The harm to Plaintiff, if Defendant's trademark claims are enforced, would  
18 be severe and manifestly unfair.

19 121. During Plaintiff's delay in bringing challenge, Plaintiff developed an  
20 identity in KINECTIVE as a business as well as a brand name for Plaintiff's suite of  
21 software and services.

22 122. Defendant's delay in asserting its claims of infringement and dilution  
23 unfairly prejudiced Plaintiff because Plaintiff relied on the absence of any such claims in  
24 spending the considerable resources involved in building the KINECTIVE name as the  
25 identity of Plaintiff's business name and the brand name of Plaintiff's suite of products  
26 and services.

27 123. Plaintiff thus is entitled to declaration that Defendant's claims of  
28 infringement and dilution are barred by the equitable doctrine of laches.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that the Court enter judgment in Plaintiff's favor as follows:

1. A declaration that Plaintiff's use of its KINECTIVE Mark with the KINECTIVE Suite of Software and Services is not reasonably likely to cause confusion among purchasers and prospective purchasers of Plaintiff's software and related services over whether those goods and services share an origination, association or affiliation with Defendant's KINECTA-branded credit union services.

2. A declaration that Defendant's KINECTA Marks are not "famous" as defined in 15 U.S.C. § 1125(c)(2)(A).

3. A declaration that Plaintiff's use of its KINECTIVE Mark is not likely to cause dilution by blurring of Defendant's KINECTA Marks.

4. A declaration that Defendant's claims of infringement and/or dilution are or is barred by the equitable doctrine of laches.

5. An award to Plaintiff of such other and/or further relief as the Court deems just and equitable under the circumstances.

Dated: February 28, 2025

DICKINSON WRIGHT PLLC

/s/ Frank G. Long

Frank G. Long

J. Alex Grimsley

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